

ASSOCIATION OF CALIFORNIA WATER AGENCIES

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FAX TRANSMITTAL

To:	Mike Chrisman, Secretary for Resources
Organization:	State of California Resources Agency
Fax:	916-653-8102
From:	Steve Hall, Executive Director
Subject:	CEQA Improvement Advisory Group
Date:	February 16, 2005

This FAX contains 3 pages(s) including cover sheet.

Notes:

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Association of California Water Agencies

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February 16, 2005

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Mr. Mike Chrisman
Secretary for Resources
State of California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Dear Mr. Chrisman:

On behalf of the Association of California Water Agencies (ACWA), I thank you for the opportunity to serve as the association's representative on the newly established CEQA Improvement Advisory Group. To that end, I've informally polled ACWA members to determine if there are areas of CEQA implementation that would benefit from statutory or guideline changes.

Below you'll find a brief description of some areas of CEQA that ACWA feels are appropriate for review by the advisory group:

- Growth-inducing impacts
- EIR tiering
- Cumulative impacts
- Allegations of environmental harm
- Late comments

Growth-Inducing Impacts

The tension between CEQA requirements to assure an adequate water supply to support housing development and the CEQA concept of growth-inducing impacts from the development of water supplies must be addressed. This tension arises out of a line of case including *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892, *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal. App. 4th 715, and others which place water agencies in the untenable position of being required to provide sufficient water for anticipated growth while being forced to find that development of such water supplies are not growth inducing.

EIR Tiering

Uncertainty has resulted from *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892 ("PCL"), which invalidated a programmatic or master EIR because it was prepared by the wrong lead agency. In a subsequent case, *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal. App. 4th 1337 1373, the court held an EIR to be inadequate because it "tiered" off of the master EIR that had been invalidated in *PCL*. Subsequently, a stand-alone EIR to support the same water transfer project, has been challenged, in part, because it was stand-alone and proceeded ahead of the master EIR. CEQA is unclear about when an EIR may (or must) be tiered and when an EIR may (or must) be stand-alone.

Cumulative Impacts

Determination of whether a project's cumulative impacts will be significant or not continues to be a concern. In 1998, new CEQA guidelines were adopted to address this issue, but were invalidated in *Californians for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98.

Allegations of Environmental Harm

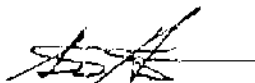
Under current law and the guidelines, a commentator has no duty to provide substantial evidence of its allegation of environmental harm. This places the burden of proof and the disadvantage of having to prove the negative on the project applicant and the lead agency.

Late Comments

While evaluation and response to public comments are an essential part of the CEQA process, the possibility or even likelihood of risk of litigation because of failure to respond to a late comment does not encourage savvy commentators to abide by the spirit of the guidelines.

Again, I thank you for the opportunity to assist the Resources Agency in its efforts to improve CEQA and its implementation; and I look forward to working with the advisory group.

Sincerely,



Steve Hall
Executive Director

SKH:WH:dgp

By fax: 916-653-8102